

## Part I - Income taxes

### Compliance initiative for nonresident aliens and foreign corporations

#### Notice 2003-38

The Internal Revenue Service (IRS) announces a compliance initiative for nonresident aliens and foreign corporations that have not filed U.S. federal income tax returns and that may consequently be denied deductions and credits pursuant to Code section 874(a) or 882(c)(2). Taxpayers that have requests for waivers pending with the IRS under Regs. 1.874-1(b)(2) or 1.882-4(a)(3)(ii) may also participate in this compliance initiative.

This compliance initiative is intended to encourage nonresident aliens and foreign corporations to file income tax returns that were not filed in a timely manner in accordance with the regulations under section 874(a) or 882(c)(2). The IRS will waive the filing deadlines set forth in Regs. 1.874-1(b)(1) and 1.882-4(a)(3)(i) if a taxpayer files on or before September 15, 2003 all required U.S. federal income tax returns for every year for which a waiver is requested. In addition, a taxpayer must pay the reported income tax liability with each such return, must pay statutory interest and penalties as determined by the IRS (except the fraudulent failure to file penalty, as discussed below), and must cooperate with the IRS upon request in determining and satisfying its income tax liability for any taxable year for which a waiver is requested. To qualify for a waiver, a taxpayer must attach a statement to each late income tax return for which a waiver is requested agreeing to cooperate with the IRS upon request in determining and satisfying the taxpayer's income tax liability for that taxable year. The requirements of this compliance initiative may not be satisfied by filing protective returns.

This compliance initiative is not available where the taxpayer has previously filed a U.S. federal income tax return or a protective return for any taxable year prior to a taxable year for which a waiver is requested, or where the IRS has contacted the taxpayer concerning a failure to file U.S. federal income tax returns, initiated an examination or investigation of the taxpayer, or notified the taxpayer that it intends to commence an examination or investigation.

## **SCOPE OF THE WAIVER**

Under this compliance initiative, the IRS will waive the filing deadlines set forth in Regs. 1.874-1(b)(1) and 1.882-4(a)(3)(i) with respect to late-filed U.S. federal income tax returns.

With respect to U.S. federal income tax returns filed pursuant to this compliance initiative, the IRS will also waive the fraudulent failure to file penalty under section 6651(f), but not the failure to file penalty under section 6651(a)(1). The IRS will impose other applicable penalties, as appropriate, with respect to U.S. federal income tax returns filed pursuant to this compliance initiative.

If a taxpayer that is eligible under this Notice to participate in this compliance initiative files all required U.S. federal income tax returns for taxable years ending in 1996 and all subsequent years for which the applicable deadline set forth in Regs. 1.874-1(b)(1) or 1.882-4(a)(3)(i) has passed, and satisfies all other requirements set forth in this Notice, the IRS will not examine any potential U.S. federal income tax liability with respect to taxable years ending prior to 1996. However, effect will be given to a carryover item of deduction or credit only if all required U.S. federal income tax returns are filed on or before September 15, 2003, for the year in which the item arose and for all years through the year in which the item has effect, and the taxpayer cooperates with the IRS upon request in verifying the carryover item of deduction or credit. Protective returns will not satisfy the requirements of this or the preceding paragraph.

## **SUBMISSION PROCESS**

The IRS will waive the timely filing requirement under Regs. 1.874-1(b)(1) and 1.882-4(a)(3)(i) for any taxable year for which a waiver is requested, provided that the nonresident alien or foreign corporation:

- (1) files a true and accurate return for such taxable year, not including a protective return, with the Philadelphia Service Center on or before September 15, 2003;
- (2) pays the reported tax liability with the filing of the return;
- (3) pays statutory interest under section 6601 and penalties as determined by the IRS;
- (4) agrees in a statement attached to the return to cooperate with the IRS upon request in determining and satisfying the taxpayer's liability for income tax, interest and penalties, for the taxable year for which a waiver is requested, and does in fact cooperate in accordance with such agreement, and satisfy any liability determined; and
- (5) attaches to the return a copy of any power of attorney (Forms 2848) granted by the taxpayer with respect to such taxable year.

Income tax returns that were not timely filed pursuant to Regs. 1.874-1(b)(1) and 1.882-4(a)(3)(i) must be filed with the Philadelphia Service Center via the United States Postal Service to P.O. Box 480, Bensalem, PA 19020; or by private delivery service to 11601 Roosevelt Blvd., Philadelphia, PA 19154.

Each late return filed under this notice must be marked at the top, in red,

“RETURN FILED UNDER NOTICE 2003-38.”

## **MISCELLANEOUS**

The provisions of this notice relate to qualification for and participation in a compliance initiative with respect to late U.S. federal income tax returns filed on or before September 15, 2003, for prior taxable years by taxpayers subject to section 874(a) or 882(c)(2).

The IRS is committed to assisting all taxpayers to file their required U.S. federal income tax returns. Taxpayers that do not file pursuant to this compliance initiative are not prevented from demonstrating that they satisfy the reasonable cause exception under Regs. 1.874-1(b)(2) or 1.882-4(a)(3)(ii).

## **PAPERWORK REDUCTION ACT**

The collection of information contained in this announcement has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. § 3507) under control number 1545-1845. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. The collection of information in this announcement is in the section titled **SUBMISSION PROCESS**.

This information is required to determine whether a taxpayer is entitled to a waiver under this compliance initiative. The collection of information is required to obtain the benefit described in this notice. The likely respondents are individuals, and businesses or other for-profit organizations.

The estimated total annual reporting burden is 50 hours. The estimated annual burden per respondent is 15 minutes. The number of respondents is uncertain but is estimated at 200. The estimated frequency of responses is one time per respondent. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. § 6103.

## **CONTACT INFORMATION**

For further information regarding this notice, contact Jim Carfine at (202) 435-5044 (not a toll-free call).